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SUBJECT: TURKEY: FIFTH TIFA TALKS SEE CONSTRUCTIVE DIALOGUE ON ISSUES

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¶1. (SBU) Summary: The fifth meeting of the U.S.-Turkey Trade and Investment Framework Agreement (TIFA) Council meeting convened April 12 - 13 in Washington, D.C. The issue-packed agenda included substantive discussions on agricultural market access, the Doha Round, the Generalized System of Preferences (GSP) program, IPR protection, U.S. anti-dumping cases, Technical Barriers to Trade, and Joint Production Opportunities. The delegations agreed to reexamine Turkish import requirements for U.S. livestock products if the OIE rules that there is no longer a BSE risk and to discuss in more detail a recent requirement that all distilled spirits in Turkey be registered and strip stamped. The contacts formed and the channels of communication opened through the TIFA will encourage continued dialogue on these issues throughout the coming year. End summary.

¶2. (SBU) The fifth meeting of the U.S.-Turkey Trade and Investment Framework Agreement (TIFA) Council convened April 12 - 13 in Washington, D.C. Assistant USTR for Europe and the Middle East Shaun Donnelly led the U.S. delegation, which included representatives from USTR, the Departments of State, Commerce, and Agriculture and the U.S. Patent and Trademark Office, as well as Embassy Ankara. GOT Foreign Trade Deputy Under Secretary Ulker Guzel led the Turkish delegation, which included representatives from the Undersecretariat for Foreign Trade (FTU), and the Ministries of Agriculture, Foreign Affairs, Finance and Culture and Tourism. The meetings convened for a full day on April 12 followed by an April 13 morning session for the Turkish delegation to meet with U.S. company representatives from the agriculture, pharmaceutical, medical devices, distilled spirits, and financial services sectors.

Agricultural Market Access

¶3. (SBU) During the discussion on market access in Turkey for U.S. agricultural products, Robert Curtis from USDA pointed to a recent collaborative effort to solve an issue related to Turkish imports of U.S. pet food as an example of the cooperation that results with each TIFA. Previous positive developments aside, Curtis argued that

the Turkish Ministry of Agriculture and Rural Affairs' (MARA) continuing lack of transparency for testing and import regulations, especially for livestock products, result in a de facto ban on U.S. products. In addition, he argued that Turkey had not fulfilled its requirements to notify the WTO Sanitary and Phyto-sanitary (SPS) Committee of changes to SPS regulations. He noted that the costs borne by the U.S. exporters to have inspection facilities in the U.S. inspected by MARA officials were prohibitive. He requested a list of the import requirements for livestock products and added that better communication would aid progress on these issues.

¶4. (SBU) Turkish embassy Agriculture Counselor Mehmet Cagil responded by asserting that Turkey does not import U.S. beef because of the instances of BSE found in U.S. cattle several years ago. He added, however, that MARA is awaiting OIE's May 20 - 25 meeting, during which they anticipate OIE will make a ruling about the current risk of U.S. products. He suggested that, if the OIE guidelines permit, MARA would begin issuing import licenses for U.S. products. He added that Turkey continues to have concerns about incidences of Avian Influenza in U.S. poultry and must review import regulations further. Jim Butterworth, a USDA SPS expert, noted that Turkey's restrictions on U.S. products appear more stringent than OIE regulations require and added that the EU is importing U.S. products.

¶5. (SBU) Curtis also raised Turkey's recent increase in soybean import tariffs from 0 - 10%. Turkish FTU DDG for Multilateral Affairs, Hasan Yalcin, observed that the increase is within Turkey's bound tariff rates in the WTO and defended tariff increases as Turkey's only means of assisting its agriculture sector since it cannot afford to provide domestic subsidies. AUSTR Donnelly observed that the goal in the Doha Round is tariff reduction and an overall restructuring of international agricultural trade policy. The Turkish side requested assistance in moving Turkey up as an APHIS priority so that it can be approved to export more fruits and vegetables to the U.S. The USDA representatives agreed to discuss this with APHIS.

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Doha/NAMA Textiles Proposal

¶6. (SBU) AUSTR Donnelly stated that Doha is the highest trade priority of the U.S. and that USTR Schwab encourages the full participation of developing countries. Doha is vitally important to the future of world trade. Yalcin encouraged U.S. support for Turkey's textile proposal put forward during the NAMA discussions. Turkey believes the proposal provides a balanced approach for the participation and preservation of textile markets in developing and developed countries. USTR Chief Textile Negotiator Scott Quesenberry explained the constraints of Trade Promotion Authority, which is set to expire on June 30, and some of the sectoral requirements contained therein, including a provision that the U.S. seek reciprocal textile market access as part of any agreement. He applauded Turkey's constructive role to achieve an equitable textile sectoral and said that that USTR is currently considering several proposals regarding textiles. A resolution on agriculture at Doha could mean more progress on NAMA issues such as textiles.

Generalized System of Preferences

¶7. (SBU) USTR's director of the GSP program, Marideth Sandler, described the discussions among U.S. policymakers which preceded the most recent renewal of the GSP program and described the program's importance for both foreign and domestic industries. The two sides discussed the outlook for the competitive need limit waiver (CNL) that Turkey currently has for gold jewelry and the strong likelihood that it will be revoked in 2 years. The Turkish delegation was provided with a one-page overview of the program designed to educate exporters who may not already be taking advantage of the benefits and encouraged to work with exporters to find new products within the GSP-qualified categories that Turkey could export to the U.S.

¶ 8. (SBU) USTR director for Intellectual Property, Jennifer Choe Groves, noted the Turkish government's improvements in enforcement and data protection for pharmaceuticals. She added that USTR sincerely wants to see Turkey's position on the Special 301 Priority Watch List improve and believes that this is in Turkey's control to achieve. She reiterated points previously delivered during the Advance Special 301 review (refs A and B), including U.S. interest in the outcome of the generic drug applications filed prior to the January 1, 2005 start of Turkey's new data exclusivity law, the need for a stronger patent linkage system to prevent copies of pharmaceutical products with valid patents from receiving marketing approval, enforcement and prosecution of book piracy, and the use of certified software by Turkish government agencies.

¶ 9. (SBU) On the pharmaceutical issue, Turkish FTU representatives argued that there are 12-15 generic applications filed prior to January 1, 2005, which are still pending before the Turkish Ministry of Health (MOH) and which are reportedly completed. They explained that the remainder of the applications have not been completed by the generics companies and therefore cannot be acted upon at this time. Turkish law does not have a time limit by which pending applications must be completed and reviewed so these applications could be pending indefinitely.

¶ 10. (SBU) On the issue of patent linkage, there are presently no plans to change the existing legislation to create a different patent linkage system. Turkish representatives argued that, because such a system is not an international or EU requirement, they do not see a compelling reason to add linkage to their current system. In the Turkish system, a company applying for marketing approval of a pharmaceutical product must prove as part of the application process that there are no existing patents and Turkish judges have the ability to immediately stop the sales of a disputed product. USTR responded that the U.S. would prefer a system that publicized the applications in the national gazette, thus making it more transparent, and provided the patent-holder with recourse prior to the issuance of marketing approval.

¶ 11. (SBU) Addressing the enforcement and prosecution of book piracy, Turkish Ministry of Culture and Tourism (MOCT) Director General Selahattin Ertas provided statistics (reported in ref B) showing a dramatic decrease in street sales. He acknowledged that court proceedings were too long but noted that the number of specialized IPR courts, judges and prosecutors has increased, and these judges

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and prosecutors as well as Ministry officials are participating in a number of twinning projects with the EU to train judges, prosecutors and law enforcement officials. A database for published goods should be completed by the end of 2007, which will require registration of goods by rights holders, a point that concerned USTR and EEB/IPE representatives.

¶ 12. (SBU) Regarding government use of pirated software in Turkey, the Turkish delegation regretted not having statistics available. Each agency is responsible for enforcing the Prime Ministerial decree prohibiting such use, which is still in force. They added that Microsoft is active in the Turkish market and recently began a new certification program. To the delegation's knowledge, the use of pirated software by the GOT is not a significant problem.

Iron and Steel Anti-Dumping

¶ 13. (SBU) The Turkish delegation reiterated the views of Foreign Trade Minister Tuzmen in his letter to Commerce Secretary Gutierrez hoping that the U.S. will not take into consideration as part of its anti-dumping case against Turkey a finding of the Turkish Competition Authority on a domestic anti-trust suit. Katja Kravetsky, Special Assistant to the Commerce Deputy Assistant Secretary for AD/CVC Operations, responded that they are still

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conducting this investigation and must look at this report to ensure

the reliability of the Turkish respondents, whose responses were due by April 11. Kravetsky said they would be looking into the issue and the companies' responses provided to the questionnaire on the issue when the investigators visit the Turkish companies. Turkish officials added that the anti-trust finding was for the period 2000 - 2004 while the anti-dumping case covers the period from 2005 - 2006. According to Turkish officials, the Turkish Competition Authority issued another report in 2006, finding no collusion in the iron and steel sector. Kravetsky replied that the Turkish companies should make sure that this information is submitted on the administrative record of the proceeding.

Distilled Spirits

¶14. (SBU) Commerce's Director for Central and Southeastern Europe, Jonathan Kimball, raised discriminatory taxation of imported whiskey in comparison to domestically produced Turkish raki, which Commerce believes is a direct substitute, a practice that may violate GATT Article 3, Paragraph 2. Mehmet Erkan from the Turkish Ministry of Finance explained Turkey's distilled spirit taxation system, which allows for the imposition of two types of taxes - a special consumption tax or a minimum specific tax rate per liter of alcohol.

Kimball noted that U.S. industry's concern is that the minimum specific tax - which is lower for Turkish raki than for whiskey, rum, vodka etc. - is the tax most often levied on distilled spirits.

Kimball also encouraged passage of the draft legislation that would shorten the timeframe for obtaining a distilled spirit import license and increase the transparency of the process.

¶15. (SBU) Kimball raised a new issue concerning a March 15 notice from the Ministry of Finance that as of June 19, 2007, all distilled spirits in Turkey will require a registered strip stamp, ostensibly to combat counterfeits (dangerous to the public's health) from entering the market. Erkan explained that the GOT considers this a service rather than taxation because the government will not receive any payment from the strip stamps, which a private contractor will apply to imported spirits. Turkish companies producing spirits will apply the stamps at their factories. Kimball noted, however, that the new system appears to violate GATT Article 3, Paragraph 3, requiring national treatment because importers are required to pay six times as much as domestic producers for their stamps. Erkan replied that the cost was necessary to offset the costs of building and operating the private facilities in which imported spirits will be stamped. Kimball asked if the Ministry of Finance would be willing to discuss the effect of the system directly with U.S. distilled spirits exporters and cautioned that trade could be disrupted before the problems are resolved. Erkan agreed to meet with interested U.S. companies when he returns to Ankara. Deputy U/S Guzel promised a speedy response to the letter about strip stamps signed by A/USTR Donnelly and Commerce A/S Bohigian and to discuss this issue at greater length internally.

"Joint Production Opportunities"

¶16. (SBU) The Joint Production Opportunities (JPO) agenda item, a

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concept theorized by EEB A/S Sullivan and Turkish officials during the recent Economic Partnership Commission (EPC) meeting, elicited curiosity from the Turkish officials. FTU Representatives argued that any such initiative should be private sector driven and opined that the concept was being championed by TOBB because of its lingering interest in the QIZ concept, which the GOT is no longer pushing. USTR's Director for Middle East Affairs Ned Saums described the QIZ program and discussed both why it is not feasible to consider expanding it to include Turkey and why it is not applicable to the Erez industrial zone in Gaza where Turkish companies have established production. There was some general discussion of how U.S. and Turkish firms should cooperate more on agriculture by using U.S. technology and expertise to process food in Turkey for sale in Turkey and the region. AUSTR Donnelly closed by observing that any discussions related to Turkish firms' desire for preferences should be treated very carefully given the political sensitivity of these issues.

WTO Rice Case

¶17. (SBU) FTU DDG Hasan Yalcin raised the ongoing case challenging Turkey's rice import procedures that the U.S. brought before the WTO Dispute Settlement Body (DSB). He expressed the Turkish view that they had done what was requested by the U.S. to rectify the problems faced by U.S. exporters and, therefore, they believe there is no need to continue with the case at the DSB. AUSTR Donnelly responded that the U.S. does not believe that the GOT has been ready to enter into an agreement that would lay to rest the concerns of U.S. producers and warrant the dropping of the case. He noted that the interim DSB report is due to be released to the two sides on May 3 - 4, but promised to communicate Turkey's concerns to U.S. officials involved in the case for consideration.

Dialogue Deepens Understanding

¶18. (SBU) Comment: Both sides praised the government and private sector meetings for their level of detail and constructive tone. Each side came well-prepared to discuss several long-standing issues of concern. While no substantive solutions were found, contacts were made and the lines of communication were opened in such a way that less formal discussion can continue throughout the coming year, helping lead to positive results. End comment.

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